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OFFICE OF PETITIONS

In re Application of
Donald Leonard Nicholas Cardy et al.
Application No. 08/737,457
Filed: March 12, 1997
Attorney Docket No. 960670.ORI

ON PETITION

This is a decision on the renewed petition, filed July 9, 2004, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on February 14, 2003, for failure to timely respond to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, mailed January 13, 2003. The Notice set a 30 day period for reply. Accordingly, a Notice of Abandonment was mailed September 15, 2004. A petition filed March 1, 2004 was dismissed in a decision mailed April 9, 2004 because it lacked the required reply.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Comes now petitioner with the instant renewed petition, a request for a one month extension of time, a paper copy and a substitute CRF copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing, in compliance with 37 CFR 1.821(e), (f), (g), 1.825(b), or (d), a statement that the submission includes no new matter and one sheet of drawings containing Figure 10.

Additionally, this is a decision regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 also filed with the July 9, 2004 renewed petition.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission in the amount of \$1955.00 on July 9, 2004, under 37 CFR 1.28 is hereby **ACCEPTED**. However, petitioner is ultimately responsible for ensuring that the correct fee is paid.

Small entity status will no longer apply.

This matter is being referred to Technology Center 1644 for further examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions